

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON, WEST VIRGINIA**

**J.M., a minor,
by and through TANYA LARDIERI,
his Parent and Next Friend,**

Plaintiff,

v.

CIVIL ACTION NO.: 2:15-cv-04822

**LOGAN COUNTY BOARD
OF EDUCATION, *et al*,**

Defendants.

**DEFENDANTS' MOTION TO DISMISS
PLAINTIFF'S COMPLAINT FOR FAILURE TO PROSECUTE**

COME NOW the Defendants, Logan County Board of Education, Logan Middle School, Phyllis Adkins, William Davis, Mark McGrew, Dr. Pat White, and James Frye in their official capacities, Wilma Zigmond, Ernestine Sutherland, David Burroway, Howard Rockhold, Anita Gore, and Christopher Marcus, each in their individual and official capacities, by counsel, Duane J. Ruggier, II, Jacob D. Layne, and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, pursuant to Federal Rule of Civil Procedure 41(b), and move the Court for an Order dismissing Plaintiff's Complaint for failure to prosecute his claims. In support of this Motion, these Defendants submit their Memorandum of Law filed contemporaneously herewith.

WHEREFORE, for the foregoing reasons, these Defendants respectfully move this Court to dismiss the Complaint with prejudice and for any other relief the Court deems proper.

**LOGAN COUNTY BOARD OF EDUCATION,
LOGAN MIDDLE SCHOOL, PHYLLIS
ADKINS, WILLIAM DAVIS, MARK
MCGREW, DR. PAT WHITE, JAMES FRYE,
WILMA ZIGMOND, ERNESTINE
SUTHERLAND, DAVID BURROWAY,
HOWARD ROCKHOLD, ANITA GORE, and
CHRISTOPHER MARCUS,**

BY COUNSEL,

/s/Duane J. Ruggier, II

DUANE J. RUGGIER II (WVSB #7787)

JACOB D. LAYNE (WVSB #11973)

**PULLIN, FOWLER, FLANAGAN,
BROWN, & POE, PLLC**

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Charleston, West Virginia 25301

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CERTIFICATE OF SERVICE

The undersigned counsel for Defendants do hereby certify on October 20, 2015, that a true copy of **DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE TO PROSECUTE** has been filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the below listed CM/ECF participant:

Benjamin F. White, Esquire
Benjamin F. White, Attorney at Law
338 Main Street
Chapmanville, West Virginia 25508
Counsel for Plaintiff

s/Duane J. Ruggier II
DUANE J. RUGGIER II (WVSB #7787)
JACOB D. LAYNE (WVSB #11973)

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